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SUBJECT: MALI'S ANTI-PIRACY EFFORTS STYMIED BY ITS OWN
JUDICIARY

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¶1. (SBU) Summary: On March 21, Malian authorities destroyed 20 tons of counterfeit goods - including fake toothpaste, soap, and other products valued at USD 40,000 to 60,000 - seized from local markets. The joint effort by the Regional Directorate of Trade and Competition (DRCC), law enforcement, local, and judicial officials was the latest action in Mali's attempt to curb its flourishing trade in counterfeit goods. Counterfeit products comprise a significant share of local consumption of some goods: an estimated 40 percent of the cigarettes on the local market, for example, are deemed to be counterfeit. In an April 6 meeting with Embassy, Director of the DRCC said the largest obstacles to effectively combating piracy were a shortage of resources as well as delays and corruption within Mali's judiciary. While western donors often tend to focus more on the corrupt component of the Malian judiciary, helping Mali address its systemic shortcomings - ranging from the evident lack of training, resources, and qualified personnel - may be the first step toward supporting responsible officials and institutions like the DRCC combat against Mali's trafficking trade. End summary.

Mali's Trade in Counterfeit Stuff

¶2. (U) On March 21, a regional branch of Mali's primary anti-piracy authority, the Regional Directorate of Trade and Competition (DRCC) in Segou, northeast of Bamako, destroyed 2,330 cartons of counterfeit Close Up toothpaste, 447 cartons of soap, 290 cartons of motor oil, and sundry other products valued at CFA 20-30 million (USD 40,000-60,000). This was the most recent of the agency's efforts to curb Mali's vibrant trade in counterfeit goods, which includes cigarettes, textiles, auto parts and electronics, medicines, and foodstuffs. Most of these goods are manufactured in China, while counterfeit electronics originate primarily in Dubai. The DNCC claimed that, between 2004 and 2007, it seized CFA 474.5 million (USD 949,000) worth of counterfeit products.

Anti-Piracy Efforts Face Significant Challenges

¶3. (U) In an April 6 meeting with the Embassy, Director of the National Directorate for Trade and Competition, Mahamane Toure, said Malian law made it difficult to prove what he described as otherwise straightforward cases of piracy. Mali's 2007 statute against piracy requires the complainant to prove, in a tribunal, ownership of the original product. Ownership is based on the registry of the product with the Organization of Intellectual Property of African Countries (OAPI), a regional organization, and the Malian Center for the Advancement of Industrial Property (CEMAPI). Toure claimed that this can be tricky, as the tribunal may

interpret the language of the product registration quite strictly. Taking his cellular phone as an example, Toure said that the court could decide that, if the size of the lettering of the brand in the original product had not been specified, the product in question might not, in fact, be registered and the complainant could claim no damages.

¶4. (U) Once the complainant has successfully proven infringement of intellectual property rights, the tribunal approves the seizure of the counterfeit product, at which point the DNCC may destroy the merchandise. In some cases, the companies in dispute may reach an agreement before the case is heard in the tribunal. Toure gave the example of one Chinese tea company whose labeling closely resembled that of another Chinese tea manufacturer. Both parties agreed that the offending company would remove its labeling and sell its products in bulk, thereby avoiding significant losses. This case, involving two Chinese companies, was the only instance of agreement Toure could cite.

¶5. (SBU) When asked about the role of the judiciary in enforcing Mali's anti-piracy laws, Toure said it is complicated and indicated that delays and corruption within the judiciary had stymied efforts to combat the flourishing trade in counterfeit goods. At best, the tribunals are slow to decide the merits of complaints. At worst, judges could be bribed to rule against the complainant in clear instances of property rights infringement. Toure cited two ongoing cases: Dunhill cigarettes, owned by British American Tobacco, and Maggi bouillon cubes, owned by Nestle. Both cases involve Chinese manufactured counterfeits. Toure presented samples of the original and counterfeit Maggi bouillon packages,

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which had only minor, almost indistinguishable differences.

¶6. (U) In addition to challenges in the judiciary, Toure said it was difficult for the DNCC's agents to effectively patrol borders and marketplaces, as they lacked transportation. With 210 agents to staff eight regional offices as well as the national office in Bamako, the DNCC also faced shortages in manpower. These shortages prompted British American Tobacco (BAT) to sign an agreement with the DNCC in December 2008 to provide support for anti-piracy efforts, which included the provision of ten motorcycles for DNCC patrolling in key areas. BAT has been heavily affected by piracy, as DNCC officials estimated that 40 percent of all cigarettes consumed in Mali were counterfeit. Toure did not say whether the 10 motos offered by BAT were also of Chinese origin.

Comment: The Judiciary Again

¶7. (SBU) Mali's limited ability to tackle the trade in counterfeit products provides yet another example of Mali's difficulties in enforcing the rule of law. The Malian judiciary has proven unable to meaningfully respond to the trafficking of goods, as well as to the trafficking of arms and human beings. While judicial corruption is often the easiest scapegoat, problems with the Malian judiciary go much deeper and include systemic challenges associated with legal training, judicial resources, and an inadequate number of magistrates and judges on the Malian bench. The experience of the U.S. firm Dow Agro Sciences illustrates these complexities (reftel). Its four year ongoing legal battle with a Chinese company accused of trademark infringement has turned into a showcase of the Malian judiciary's inability to adjudicate complex cases of intellectual property rights. Similar challenges plague other aspects of Mali's enforcement mechanisms. Meanwhile, Mali's flourishing trade in fake products continues to put consumers at risk and discourage investors who cannot be assured of the minimum protections for their investment.

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